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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

## **The Role of Competition Policy in Promoting Economic Recovery – Note by the European Union**

2 December 2020

This document reproduces a written contribution from the European Union submitted for Item 2 of the 134th OECD Competition Committee meeting on 1-3 December 2020.

More documents related to this discussion can be found at  
<http://www.oecd.org/daf/competition/promoting-economic-recovery.htm>

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## *European Union*

### 1. The big picture: Competition and recovery in a sustainable way

1. The COVID-19 pandemic and the related containment measures have triggered an unprecedented economic crisis.
2. In times of such crisis, the **competition rules have an essential role to play**. The more competitive markets remain, the better investment will flow where it is truly needed. The result will be a quicker, stronger and more sustainable recovery. Experience from previous crises, including the Great Depression in the US in the 1930's, has shown that suspending or relaxing competition rules as a short-term solution to support companies in distress will most likely delay recovery and create market conditions and harm that would be difficult to reverse. Therefore, each of the three instruments – first and foremost EU **State aid** but also **antitrust** and **merger frameworks** – are key tools for recovery (see also below sections 2-4).
3. The competition rules flank the significant private investments, public funding and reforms that are needed to ensure a sustainable economic recovery.
4. As a central pillar of NextGenerationEU, an emergency temporary recovery instrument to help repair the immediate economic and social damage brought about by the coronavirus pandemic, the **Recovery and Resilience Facility**<sup>1</sup> (RRF) will make €672.5 billion in loans and grants available to support reforms and investments undertaken by Member States. The aim is to make European economies and societies more resilient and accelerate **the green and digital transitions**.
5. The RRF is also an opportunity to pursue development in so called **flagship areas**<sup>2</sup>, via investments and reforms with tangible benefits for the economy and citizens across the EU, and which are needed for the green and digital transitions. Member states are preparing national recovery and resilience plans, which will have to include a minimum of 37% of expenditure related to climate and 20% related to the digital transition. The Commission has published guidance<sup>3</sup> to enable Member States to design and rollout their recovery plans in line with EU priorities.
6. As **State aid rules** apply to the RRF, compliance with the State aid framework will ensure that public funds are well targeted, not crowding out private investment or leading to serious distortion of competition and safeguard the level playing field within the Single Market. In this context, the Commission will publish guidance documents on the State aid-related aspects of the RRF investments to assist Member States upfront with the design and preparation of their recovery plans.

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<sup>1</sup> The related Regulation will enter into force when the negotiations among the co-legislators, which came to an agreement on 11 November 2020, are concluded.

<sup>2</sup> Communication from the Commission – Annual Sustainable Growth Strategy 2021; 17.9.2020; COM/2020/575 final. The 7 flagships relate to: clean technologies and renewables; energy efficiency of buildings; sustainable transport and charging stations; roll-out of rapid broadband services; digitalisation of public administration; data cloud capacities and sustainable processors; education and training to support digital skills.

<sup>3</sup> See: [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en#example-of-component-of-reforms-and-investments](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#example-of-component-of-reforms-and-investments)

## 2. State aid: Temporary framework, guidance, transparency

7. **EU State aid policy** lays down the conditions under which Member States can provide financial support to undertakings.

8. From the early stages of the pandemic, it became clear that businesses in the EU were suffering from a severe liquidity shortage due to the lockdown and other restrictive measures put in place by governments in order to limit the spread of the Coronavirus. The Commission reacted quickly (as early as mid-March) by adopting a **State Aid Temporary Framework** that **allows Member States to support businesses that are hurt by the outbreak**, while preserving the integrity of the internal market.<sup>4</sup>

9. The State aid Temporary Framework is **limited in time (until 30 June 2021 and 30 September for recapitalisation measures)** and **includes safeguards to ensure that public support does not go beyond what is necessary**. For example, if a Member State decides to step in with recapitalization measures, its support will come with strings attached, including a ban on dividends, acquisitions, bonus payments as well as, for more significant amounts of aid, further measures to limit distortions of competition.

10. In parallel, the Commission has put in place special mechanisms for facilitating a swift adoption of State aid decisions. On State aid alone, the Commission has **adopted over 350 decisions approving over 420 national measures in relation to the coronavirus outbreak**, and figures continue to grow.<sup>5</sup>

## 3. Antitrust: Temporary framework, guidance, comfort letters and enforcement in exceptional circumstances

11. Since the early days of the crisis, the Commission, in close coordination with the European Competition Network<sup>6</sup>, has sent two interlinked messages that guide its antitrust enforcement policy in the recovery phase.

12. The first message is that **competition rules do not stand in the way of an efficient and justified response to specific and exceptional business needs**. The Commission is willing and able to take full account of the legal and economic context when assessing individual arrangements and is committed to make full use of the procedural flexibility in order to ensure a timely and effective intervention. In this context, the Commission launched a website dedicated to “*Antitrust rules and coronavirus*”<sup>7</sup>, adopted the **Antitrust Temporary Framework**<sup>8</sup>, and introduced a new and **temporary tool – so called ad hoc**

<sup>4</sup> See [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

<sup>5</sup> State of play at the end of November 2020.

<sup>6</sup> Joint Statement of [the European Commission Network, \(ECN\)](https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf) on the application of competition law during the Corona crisis of 23<sup>rd</sup> March 2020 ([https://ec.europa.eu/competition/ecn/202003\\_joint-statement\\_ecn\\_corona-crisis.pdf](https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf)). An efficient coordination and allocation of tasks within the ECN is key for ensuring an effective, consistent and timely intervention across the EU. This has been all the more useful during the crisis, allowing the best possible use of the limited resources of the authorities to deal with urgent requests from stakeholders while also keeping business continuity in the “normal” enforcement and policy initiatives.

<sup>7</sup> <https://ec.europa.eu/competition/antitrust/coronavirus.html>. The website is a one-stop-shop providing guidance to business and it includes a dedicated mailbox ([COMP-COVID-ANTITRUST@ec.europa.eu](mailto:COMP-COVID-ANTITRUST@ec.europa.eu)) through which companies can contact the Commission with requests for guidance on specific cooperation projects.

<sup>8</sup> Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak, 8 April 2020 (<https://eur-lex.europa.eu/legal->

**‘comfort letters’**. This allows the Commission to exceptionally give not only swift guidance but also, as an exception to the self-assessment rule, adequate certainty and comfort to individual initiatives needed to address situations of extreme urgency<sup>9</sup>.

13. The second message is that **vigorous enforcement remains the rule**, particularly during a crisis, since it is essential for recovery.

14. In a context where the number of operators may shrink and concentration may rise as a result of the financial difficulties created by the economic downturn caused by the pandemic, it is more important than ever to maintain competition between remaining operators and ensure that companies do not take advantage of the current crisis by cartelising the market or abusing a dominant position.

15. **Competition enforcers must therefore remain vigilant about the likely reoccurrence of both traditional cartels and so-called ‘crisis’ cartels**, that companies may be tempted to enter into in order to overcome overcapacity or a decline in demand. New sanitary rules may lead to new barriers to (re-)entry and potentially lead to new dominant positions in previously more competitive markets. The crisis may also trigger certain **abusive conducts**, such as excessive pricing (or other exploitative practices) for products that are high in demand. By tilting further the balance between brick & mortar and online, as well as the balance between different online actors, the crisis might also be an opportunity to foster transition to online. This will require that smaller players and new entrants are protected against possible anticompetitive behaviour by large online players.

#### 4. Merger control: Limited impact so far

16. Despite the pandemic, in the six months after the outbreak, the number of new merger notifications was at levels comparable to previous years. The same applies to the number of merger decisions the Commission has taken so far this year. The Commission was, however, faced with difficulties by some companies in some sectors to provide information under the tight timing of merger investigations.

17. As the EU regulatory and procedural framework for the assessment of mergers has not changed, **the Commission continues to deal with merger cases in line with past practices**. Every restructuring notified during or after the crisis is put to the same test as in the past. When applying this test, **the Commission takes the foreseeable impact of the pandemic into account when assessing current market conditions and expected market developments**. The Commission also stands ready to review requests for a derogation from the standstill obligation.

18. There have been occasional calls for the Commission to adopt a more lenient approach in the assessment of mergers during this crisis. But **the crisis cannot and should not serve as a pretext for approving mergers that would hurt consumers and hold**

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[content/EN/TXT/HTML/?uri=CELEX:52020XC0408\(04\)&from=en](https://ec.europa.eu/competition/antitrust/medicines_for_europe_comfort_letter.pdf)). The Temporary Framework is not sector specific, but refers to and builds on experience gained by the Commission in discussions with stakeholders in the health sector.

<sup>9</sup> On the same day as the Temporary Framework was adopted, the Commission issued the first – and so far the only (state of play at the end of November 2020) - comfort letter, addressed to the European association of generic pharmaceutical manufacturers “Medicines for Europe” ([https://ec.europa.eu/competition/antitrust/medicines\\_for\\_europe\\_comfort\\_letter.pdf](https://ec.europa.eu/competition/antitrust/medicines_for_europe_comfort_letter.pdf)). The letter concerns a specific cooperation among pharmaceutical producers, targeting the risk of shortage of critical hospital medicines for the treatment of coronavirus patients.

**back recovery.** To the contrary, protecting competition becomes even more important in times of crisis. Mergers bring about structural and therefore lasting changes in the market structure. Even if a transaction is entered into during a crisis, the potential anti-competitive effects will persist when market conditions return to normal.

19. Overall, by enforcing EU Merger Rules, the Commission is not only protecting competition but also safeguarding the basis for the recovery. The EU Merger Regulation has stood the test of past crises and has shown to be fit for purpose even in challenging economic conditions. As guardian of the enforcement of EU merger rules, the Commission will continue enforcing the rules for the long-term benefit of undertakings and consumers alike.